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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON, JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

O. P. EASTERWOOD JR.,
Parr Building,
Washington, D. C.

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.

THE WARLICK PRESS DIVISION, STECK-WARLICK CO.
P. O. BOX 10543 — 2263 VALDINA STREET — DALLAS — ME 1-3130

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The petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Claims entered as reported in that Court No. 332-66, and order of that court in overruling petitioners' motion to set aside summary judgment under Rule 69(b) of the Court, entered June 14, 1968.

OPINIONS BELOW

In *Jayson v. United States*, 294 F. 2d 808 (5th Cir. 1961) the judgment of the United States District Court

for the Northern District of Texas, Dallas Division, in Civil Action No. 8072, United States of America, plaintiff, v. Certain Land in the City and County of Dallas, State of Texas, and O. E. Padgitt, et al., was affirmed.

In Robert Jayson, et al., appellants, v. Lawson B. Knott, individually, appellee, No. 19,768, Civil 1751-65, in the United States Court of Appeals for the District of Columbia Circuit, September Term, 1965, the judgment of the United States District Court for the District of Columbia dismissing the suit was affirmed, denying appellants relief.

JURISDICTION

The jurisdiction of this court is invoked under 28 USCA 1255(a).

QUESTION PRESENTED

Whether private citizens by conspiracy, collusion and fraud with an agency of the United States Government can with impunity violate United States statutes and the United States Constitution, and then by artful design deprive other citizens of their property without any due process of law?

CONSTITUTIONAL PROVISIONS

This petition involves Amendment V, "nor be deprived of life, liberty, or property, without due process of law;" of the Constitution of the United States.

STATUTES INVOLVED

United States Code, Title 40, Sections 257, 258(a), 298(a), 352; 69 Statutes 458, 72 Statutes 1066; Section

101 of Public Law 519, 83rd Congress, and Title 1 of Public Law 519, 83rd Congress.

STATEMENT

1. The petitioners are individuals and residents of the city and county of Dallas in the State of Texas.

2. (Note: Exhibits referred to under this Statement are all in the petition in the United States Court of Claims.)

3. Prior to January, 1957 the petitioners had acquired by purchase the fee simple title to improved real property in Dallas County, Texas known as 1021 Commerce Street, Dallas, Texas and described as Lot 6, Block 63 in Original City of Dallas, containing 10,000 square feet of land, for a consideration of $200,000.00.

4. This Lot 6 has commercial improvements, being a five story brick building with a basement. The building contains 65,000 square feet of floor space, including a balcony over the first floor with 5,000 square feet. Approximately $180,000.00 in improvements were made to the building by petitioners including airconditioning, new elevators, new electrical wiring and plumbing, new flooring and ceilings. Part of this space was occupied by petitioners but most was lessee occupied or available for leasing.

5. Prior to 1957 a group of powerful real estate promoters had formed a syndicate and were acquiring entire blocks in the area adjoining Block 63 at an estimated value of $60,000,000.00 and continued their acquisitions by an es-

the submission of proposals Site Acquisition, with special reference to the first two paragraphs.

9. The syndicate violated the prohibition against modifying proposals after the time for bid opening as stated in Exhibit "C" by summitting a letter of guaranty dated December 24, 1957 to

Colonel Karl E. Wallace
Regional Commissioner
General Services Administration
1114 Commerce Street
Dallas 2, Texas

a copy of which letter of guaranty is attached as Exhibit "D", and in which the syndicate guarantees the defendent from having to expend more than one million ($1,000,000.00) dollars in acquisition of the land, including that of petitioners, and limiting the amount defendant shall pay for each lot in Block 63 without the prior approval of the guarantors. The syndicate thereby placed a ceiling upon the value and price of petitioners' land and offered it for sale without ever having communicated with the petitioners, nor did the syndicate ever have any authority to act for the petitioners in offering their property for sale or to place a value thereon. In the absence of any authority as petitioners' agents or representatives, the syndicate impaired petitioners' rights by exerting undue influence upon the defendant to acquire Block 63, including Lot 6 of petitioners, by unlawful means and without due process.

10. Exhibit "D" violates the statute, USCA, Title 40, Section 298a, in that the guaranty stated in Exhibit "D"

timated value of $14,000,000.00. Block 63 includes 1114 Commerce Street which is the present existing property for offices of the defendant in Dallas, Texas other than the Post Office and the Terminal Annex.

6. In January, 1957 the defendant, through the General Services Administration, published an Advertisement For Federal Building Site, GS-1058, a copy attached as Exhibit "A". This advertisement defined the boundaries of the area within which the site would be selected upon the bid opening at 2:00 P.M. CST on January 24, 1957, Exhibit "E".

7. The invitation for bids, Exhibit "A", contained the following provision:

> "Owners may submit their own proposals. Proposals submitted by agents must be accompanied by documentary evidence of authority."

8. Prior to the bid opening the syndicate had been in conference with the defendant through the General Services Administration, which is evidenced by their admission in the proposal dated January 23, 1957, a copy of which is attached as Exhibit "B", page 2 thereof;

> "These advantages have been brought out in greater detail in a formal brochure previously presented to you, a copy of which is attached hereto and made a part hereof."

The proposal as submitted, Exhibit "B", on GSA Form 105 did not comply with the statutes or regulations governing such matters, as set out in Exhibit "C". Instructions for

is conditional, in that it provided that the syndicate would contribute funds to the defendant *only if* a designated property was taken for the Federal Building. The syndicate, under this guaranty, allegedly paid the defendant $524,000, which was conditional and designed to influence, encourage and induce the defendant to take specific property owned by petitioners and others not members of the syndicate.

11. At the bid opening by defendant on January 24, 1957 only the proposal submitted by the syndicate was considered and accepted, although, according to petitioners' information and belief, the Regional Office of the General Services Administration acting for defendant, had indicated an earlier preference for a site several blocks East of that proposed by the syndicate and out of the area in which the syndicate was investing.

12. Subsequent to the bid acceptance of the proposal of the syndicate, Exhibit "B", the defendant instituted condemnation proceedings against the petitioners' property and that of the other owners in Block 63, excepting Lot 7, adjoining Lot 6 of petitioners. This part of Block 63 joins 1114 Commerce Street on the West. The syndicate by Exhibit "B" and "D" had made a guaranty of cost to the defendant upon property over which it had no legitimate control or authority and caused appraisals to be placed upon the property based upon fictitious low values, and petitioners here and now

serve notice upon defendant to produce any and all appraisals relating to the acquisition of the lots in Block 63 and especially those upon Lot 6.

13. In the condemnation proceedings in Civil Action No. 8072, United States of America v. Certain Land, In the City of Dallas, Dallas County, State of Texas, O. E. Padgitt, et al., in the United States District Court for the Northern District of Texas, Dallas Division, petitioners were named defendants.

14. *In Civil Action No. 8072, the issues were limited to the amount of compensation under condemnation.* The trial court summarily and arbitrarily disposed of all questions relating to the inducement of the defendant herein by the syndicate to get defendant to select the site on Block 63. The petitioners were awarded a total sum of $380,000.00 by the court upon a jury verdict, from which petitioners' had to pay the sum of $40,000.00 to lessees of petitioners' lessees for cancellation of leases caused by the syndicate. Appeal was taken from this judgment to the United States Court of Appeals for the Fifth Circuit in No. 18604, Robert Jayson, et al., Appellants v. United States of America, Appellee, which court affirmed the judgment of the trial court on October 13, 1961. As the trial court had limited the issues to the compensation under condemnation the issues relating to the inducement to the defendant in selecting this site

and the violation of "due process" have never been decided. Further, petitioners did not learn of the actions of the syndicate in the negotiations with the defendant until after the proceedings were concluded in the above suit and appeal therefrom, during which petitioners were able to obtain copies of the Exhibits attached, but not from the syndicate or the Dallas office of the General Services Administration.

15. Hearings were held by Committees of Congress concerning the irregular manner of acquisition of the property in Block 63, but no definitive action was taken to correct the irregularities but the Committees would not approve the project or appropriate the funds for construction. This is recorded in the Congressional Record, Vol. 107, dated June 26, 1961 at pages 10417-10437, inclusive, in which repeated references are made to the serious irregularities in the manner defendant acquired the site, including petitioners' property.

16. Subsequent to the proceedings in Civil Action No. 8072 and the appeal from that judgment, petitioners caused to be instituted Civil Action No. 1751-65 in the United States District Court for the District of Columbia, petitioners v. Lawson B. Knott, individually, which was a petition for injunction against defendant using the site selected, with judgment for the defendant and affirmed on appeal.

REASONS FOR GRANTING THE WRIT

The compelling reason for granting the writ is to acknowledge the supreme law and justice thereunder according to esoteric Light.

Man's attempt to conform his conduct according to this cardinal principle is reflected in the provisions of the United States Constitution and the Statutes cited.

Appendix "A", being a transcript of pre-trial proceedings, in Civil No. 8072, In the District Court of the United States for the Northern District of Texas, Dallas Division, United States of America v. Certain Land In the City and County of Dallas, State of Texas, and O. E. Padgitt et al., on page 5 of which the court stated and held;

"All right. Now, here is what: I will take up the motion with respect to the oral deposition and interrogatories in this way. Now, there are three categories of questions in both oral depositions and the written interrogatories which are objected to, *and since this law suit is confined to the issue of just compensation, I am going to take up and rule on these categories as follows: The first group of interrogatories and the issues, questions that are intended in the depositions, are objected to of this category detail the factors which entered into the decision of the Administrator of the General Services to select this particular property as a public building site. That is category No. 1. I consider that as having never been committed to the Courts.* (Italics supplied).

On page 13 of the transcript;

> "THE COURT: You are not going to have any trouble because I excluded all transactions dealing with this property prior to the day we took it, and this declaration of taking was filed in toto except merely the contract and the names of the parties to it."

The above quoted language of the trial court is conclusive proof that the issue presented in this petition has never been judicially considered but summarily dismissed from consideration.

The contract referred to is the Site Proposal with Guaranty (Appendix "B") between the syndicate of private affluent investors and the General Services Administration, and the letter of inducement from the syndicate to the Regional Commissioner of the General Services Administration, (Appendix "C").

The judgment of the Court of Claims, Appendix D, the Order, Appendix E.

It was in violation of Title 40, USCA Section 298a, when the syndicate and the government, through the General Services Administration made the agreement that the syndicate would guarantee that certain land would cost no more than a stated amount, provided the following conditions were met as set by the syndicate;

(a) The Government had to select the site proposed.

(b) The Government was not permitted to pay more for the individual lots than specified amount without

receiving the prior approval of the guarantors' syndicate.

(c) If greater than the specified amounts were paid, the guarantors were privileged to appoint a committee of four to give approval or disapproval.

(d) The Government was required to purchase or institute condemnation proceedings within two years from December 24, 1957.

(e) Even the amount of the gift was conditioned on what the Government had to pay (leaving the guarantors in position to control this by various means at their disposal.)

Further, the payment of the $524,000.00 by the syndicate to the Government was an illegal payment in violation of the statutes and as admitted by the syndicate in their agreement, Appendix C, "in order to induce the United States of America to select and acquire the * * * described property as a site for a federal building, and in consideration of the selection and acquisition of said property for such purpose." Thus on its face, the payment was made to influence the Government to acquire a site which would benefit the syndicate who were owners of adjacent property worth approximately $14,000,000.00. The powers reserved by the syndicate to approve prices, terms, negotiations, appraisals, discussions with tenants, offers, threats and inducements, with or without the consent of the Government constitutes conspiracy, collusion and fraud upon the petitioners, in violation of the "due process of law" guarantee of the Constitution.

The recital of the facts setting out the background of this case, the unlawful relationship, conspiracy, collusion and fraud between the syndicate and the General Services Administration is a flagrant violation of the cited authority; then the preemptory manner in which the District Court summarily disposed of these vital facts was an arbitrary refusal to even consider or hear any evidence on these questions. The refusal of the trial court to even consider the issues raised in the transactions and relationship between the syndicate and the General Services Administration, and never considered or heard by any subsequent proceeding is not estoppel by judgment or res judicata, this doctrine being nothing more than a doctrine of public convenience to forestall a multiplicity of suits, but never to be applied to deny the administration of fundamental justice. Support for this conclusion is found in the case of National Lead Company v. Nulson, 131 F. 2d 51 (USCA-Eighth 1942) holding;

"Under Missouri and Federal law, where the demands are different, even though the parties are the same, a former judgment is not conclusive in a subsequent action of any fact not distinctly put in issue, litigated and directly determined in the former action and 'estoppel' in such case cannot extend beyond point actually litigated and determined.

The plea of res judicata is an 'affirmative defense' and the burden of proof rests on the party asserting it.

Under Missouri and Federal law, where causes of action are different, even when the parties are the same, former judgment is only conclusive of matters which were in fact litigated in the former action, and the former judgment is not conclusive of any fact not necessary to be proved in the former case." Another case, Nunnally Investment Co. v. United States, 36 F. Supp. 332 (Ct. Cl. 1941) holding;

"The doctrine of 'estoppel by judgment' or 'res judicata' proceeds upon the principle that one person shall not a second time litigate with the same person or with such another so identified in interest with such person that he represents *the same legal right, precisely the same question, particular controversy, or issue* which has been necessarily tried and finally determined upon the merits by a court of competent jurisdiction in a judgment in personam in a former suit." (Italics supplied)

The principle is again stated clearly in 32 ALR 2d 1135, "A particular matter or issue which is withdrawn or withheld from consideration of the court, either by stipulation of the parties or otherwise, is not adjudicated, and a judgment entered on other issues will not act as a bar to another action on the issue so withdrawn."

The trial court summarily dispatched all issues raised in this petition by in effect tightly packaging them under a seal then locking them in a dark sealed room without any hearing.

CONCLUSION

Petitioners respectfully pray that this petition for writ of certiorari be granted upon the facts and the law cited and that petitioners be granted all the relief to which they are entitled in equity and in law.

O. P. EASTERWOOD JR.,
Barr Building,
Washington, D. C.

Prepared by:
Of Counsel:

CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.

APPENDIX A

In the

DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Cause No. 8072 — Civil

UNITED STATES OF AMERICA,
Plaintiff,

v.

CERTAIN LAND IN THE CITY AND COUNTY OF DALLAS, STATE OF TEXAS, and O. E. PADGITT ET AL.,
Defendant.

TRANSCRIPT OF PRE-TRIAL PROCEEDINGS

BE IT REMEMBERED that on the 14th of March, 1960, before the Honorable Joe E. Estes, United States District Judge, the following proceedings were had in the above styled and numbered cause:

APPEARANCES:

W. B. WEST, III, United States District Attorney,
Forth Worth, Texas, and
Mr. Fred L. Woodlock, His Assistant,

Appearing for the United States of America;

STRASBURGER, PRICE, KELTON, MILLER & MARTIN,
Dallas, Texas,
By Mr. H. W. Strasburger, and
Mr. Royal Brin,

Appearing for the Defendants, Robert Jayson and wife, Louise Jayson, William K. Jayson and wife, Annette Jayson, Robert Jayson Manufacturing Company;

LOCKE, PURNELL, BOREN, LANEY & NEELY, Dallas, Texas,
By Mr. Wayne O. Woodruff,

Appearing for the Defendants, Mrs. Esther Zweig, Republic National Bank of Dallas, Trustee, Mrs. Esther Zweig & Olean, a partnership, and Mrs. Lydie H. Bartholow;

ELDRIDGE, GOGGANS, DAVIDSON & SILVERBERG, Dallas, Texas,
By Mr. M. Sims Davidson,

Appearing for the Defendants, Herbert Stehberg, Inc., Frank Brandt, Inc., and Lind Novelty Company;

MR. MELVIN YONACK, Dallas, Texas,

Appearing for Defendant, Rose Manufacturing Company;

OSTER & KAUFMAN, Dallas, Texas,
By Mr. Stanley M. Kaufman,

Appearing for Defendant, Dallas Handbag Company;

MR. EMIL CORENBLETH, Dallas, Texas

Appearing for the Defendants, Clare Dress Company of Texas, Inc., and Gall Novelty Company, Inc.;

SANER, JACK, SALLINGER & NICHOLS, Dallas, Texas, By Mr. H. Louis Nichols,

Appearing for Defendant, James T. Padgitt.

PROCEEDINGS

THE COURT: Now, we will come to the motion of Gall Novelty Company to set aside the order permitting Jayson and Jayson to withdraw $171,880 filed March 12, 1959.

Wait a minute.

(Discussion off of the record.)

THE COURT: I will now rule on this. Upon careful consideration of the record in this cause, the Court is of the opinion that the order permitting Robert Jayson and William K. Jayson and their wives to withdraw $171,880 should be denied. If the sum of $19,120 is not sufficient under the laws of the United States, any amount recovered by those movants, lessees of the Jaysons, is recoverable against the Government of the United States, and they stand amply able to respond to any judgment with six percent interest from the date of taking, and therefore, the administrative estimate of $19,120 is not binding on them in any way, and there is no reason in financial security to order money taken back from the Jaysons that they have taken down or to go back of that order. That order you will submit for entry.

No. 2: Plaintiff's motion for judgment on the pleadings or for summary judgment as for its right and authority to condemn Parcel No. 2 is granted. The Court takes judicial knowledge of the authorities cited in the complaint of the

United States of America filed in this cause and particularly Title 40, Section 257, relating to the condemnation of realty for sites or other uses, any other officer of the Government, authorized to produce for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General shall upon every application cause proceedings to be commenced for the condemnation of the property. The provisions of Title 40, Section 258(a) of the United States Code with reference to taking for public use, setting forth the authority and procedure for such taking, and the compensation with interest at six percent from the date of taking. Title 40, Section 352 next for the planning of Federal public buildings and the acquisition by the Administrator of General Services, authorized to acquire by purchase, condemnation, donation, exchange or otherwise, sites or additional sites for public buildings. Title 40, Section 356, lease-purchase contracts, authority to procure space. Whenever the Administrator of the General Services determines the needs. By negotiating and entering into purchase contracts, the terms of which shall not be less than ten nor more than twenty-five years, which provides that the title to the property shall vest in the United States, terms and conditions stipulated in each of the contracts. 40(e), congressional approval, that no appropriations shall be made for purchase contract projects, which have not been approved by resolutions adopted by the Committees on Public Works of the Senate and the House, respectively, within three years after July 22, 1954. Also provisions of Title 5, Section 630(b), transferring the affairs of the Federal Works Agency to the Administrator of General Services. 69 Statutes 458, providing the appropriation for sites and planning, purchase contract, and public buildings projects. General Services Administration appropriation is 72 Statutes 1066. Sites and expenses for public building projects. And the two resolutions, one of the House and one of the Senate, that are cited in the motion, the resolutions of the House of July 19, 1956, and of the Senate, July

20, 1956, for the project in question, which is done pursuant to provisions of Section 101 of Public Law 519, 83rd Congress, for a court house and federal building of Dallas, Texas, a description of which is attached, and for this reference made a part hereof is approved, and then pursuant to the provisions of Title 1 of Public Law 519, 83rd Congress, Federal Office Building at Dallas, Texas, is approved, both resolutions reading so.

Now, that gets the lawsuit down to the issue of just compensation. You will prepare this order to show this disposition of this motion, granted.

All right. Now, the motion to limit depositions: I have read the briefs, read the motions, some of the authorities, sufficient in my opinion with my prior experience with these rules to rule on them without benefit of oral argument. So far as I am concerned, I am satisfied that you presented as concisely as you could here; you could add nothing to it with oral argument.

MR. WEST: We don't need anything other than what we stated in our brief.

THE COURT: All right. Now, here is what: I will take up the motion with respect to the oral deposition and interrogatories in this way. Now, there are three categories of questions in both oral depositions and the written interrogatories which are objected to, *and since this lawsuit is confined to the issue of just compensation, I am going to take up and rule on these categories as follows: The first group of interrogatories and the issues, questions that are intended in the depositions, are objected to of this category detail the factors which entered into the decision of the Administrator of the General Services to select this particular property as a public building site. That is category No. 1. I consider that as having never been committed to the Courts.* The Constitution of the United States provides that the legislative branch of the Government shall pass laws and create courts, inferior to the Supreme Court; they shall pass all laws necessary to carry out the legislative authority

vested in them in that Constitution by its terms. Then, they provide in the Fifth Amendment to the Constitution that just compensation shall be made for the taking of private property for public use. The law has long been that the legislative branch of the Government, for the purposes of carrying out its laws, may delegate functions such as the selection and negotiation for purchase of and condemnation of property by an executive appointee, in this case, the Director of the General Services Administration; so having done that, the Courts uniformly hold that such matters are no proper subject of review by the Courts, and certainly that is true in a condemnation case. Now, for that reason, those objections in category one will be sustained.

Now, there is a category two dealing with the interrogatories to the Government's appraisers, and I am of the opinion that the ruling I am going to make with respect to the names of all witnesses of all parties, which is going to be ordered at this Pre-Trial to be given under Rule 16, 4 and 6, of the Federal Rules of Civil Procedure provided for the limitation of certain witnesses and for any other order that will aid in the disposition of the action. With that ruling, I am going to sustain the objections to the appraisals and, of course, naturally, the documents pertaining to them, the documents being nothing but a compilation of expert work that I am not going to require either party in this proceeding to give to the other. I think that the extent to which I can wisely and properly go in that direction is that I can request both sides of this controversy to submit to me in camera for my inspection their respective valuations of this property. I won't do that unless upon request and agreement by both parties for the reason that when I am on the outpost of procedure, which I am there, and assuming great personal responsibility, I want it to be a matter requested by Counsel. You know whether you want to submit those matters or not. The reason the Committee on Protracted Cases of the Judicial Conference of the United States published, as you have all read, this handbook on protracted cases and the section of it that dealt with condem-

nation, which was done largely by Judge Carter of the Southern District of California, and about which he wrote in the American Jury Journal, the reason why we — I remember that study group — the reason why we did that was because we felt like we had inherent power to do anything that was just under the law and to have a lot of inherent power, but that in camera business was just submitted for the Judge in the trial of the cases to whether he wanted to do it, and I decided in my own mind, since I was really helping or not helping by getting them, if the lawyers didn't want to submit them, don't do it. It would be no advantage to anybody if you submitted them against your will because that would mean you don't have a mind disposed to agreement and compromise, but if you do submit them, why I will not disclose them to either party and I will tell you, though, whether I think there is a chance of your getting together, and that is what Judge Carter did, and the Committee recommended it that they go no further in that business. In other words, why go through the in camera proceedings if it doesn't have any opportunity to bear fruit? And if you go in there making one side, no matter who it is, to put up their figures to the Court, well, why have it? So I am going to leave it up to you all. Do you want to do that?

MR. WOODLOCK: We have no objections, Your Honor, if Counsel —

MR. STRASBURGER: Your Honor, you can see what is in our files any time with or without the consent of the other side.

THE COURT: You put the figures in here and this proceedings may be fruitful.

MR. WEST: I don't think it will be, Your Honor, in settlement.

THE COURT: Well, that is the end of the in camera proceedings. I will have you, at the conclusion of this Pre-Trial, submit your prospective figures, and then I will tell

you whether or not you have got any hope for progress or whether it is the jury.

Now, the next thing is this third category of miscellaneous matters. I really don't see any real objection to that type of discovery, and I think that should be denied, and I pass on the relevancy of that evidence at the trial.

Now, I am going further in this thing. There is a motion here for production of documents. Motion to limit depositions will be granted except as to category three mentioned heretofore. And you understand that that expressly lets you go ahead with your depositions and the commissions also with respect to any matters touching on valuations.

Separate trial is denied.

Petitioners' objections to interrogatories served on Strasburger has been taken care of with the motion to limit depositions.

Now, for discovery and production of documents. I am going to permit and order the production of the indemnity contract that was made between certain individuals and the Government of the United States, any inquiry as to others not named in that document as to their address and identity, identity and address. Other than that, no other documents sought in the motion need be produced and the motion with that exception or the contract and the inquiry as to the unnamed indemnitors, if any, is granted.

MR. WEST: May it please the Court, I would like to orally move for one condition to that order, and that is that we produce this contract or a true copy thereof for the examination of Counsel of Parcel 2 to be used in connection with this lawsuit under the orders of this Court.

THE COURT: That is right.

MR. WEST: Not to be divulged to the newspapers or to anyone not connected with this lawsuit.

THE COURT: I don't know about the newspapers, but I am going to say this, that I would be as confident as any-

thing in the world, and I have no fears that any lawyer in this room or anybody making any improper use of that, and you know that the uses are for the purpose of this lawsuit and nothing else.

MR. WEST: Certainly, Your Honor, not by the conduct of any lawyer, but by a party or parties to the suit.

THE COURT: Parties are not going to do any different than their lawyers do in this case with these documents, and they will get them for their lawyers, and they will get them for that. Now, you have got my rulings. The motion is granted except with respect to the contract and the non-signed indemnitors sharing the obligations of that contract.

Next, the reason I have got that in mind is that, as I view it, that is necessary for them to make their challenges to jurors. They are entitled to that to impeach any possible witnesses that you have got or anybody else has. If it doesn't arise as a matter of impeachment, it will not arise in the lawsuit. I will take the jury, as I told you, in this case. The jury will not have the slightest idea, and I will try the case to the best of my ability fairly and not have any reversible error. This is going to be an expensive trial, and there can't be any case, as I see it now, except for if you put on some witness that was associated with them in a close manner, but if they did, you are entitled to, and also when it goes to instructing the jury, but I will take the jury where they will have no idea, where they won't have any idea, what we are trying, just a plain, vanilla condemnation suit just like we try at every term of court, and that is that. Now, that took care of that. You will prepare — I think easier just this Pre-Trial Order to dispose of each of these motions. I don't care.

MR. WEST: Your Honor, my only objection to the Pre-Trial Order, the Pre-Trial Order will be filed of record where anybody can look at it.

THE COURT: All right. Just prepare those orders separately and I am going to say that the following motions

disposed of — I will add these remarks here to this order — defendants' motion to limit evidence, and that is taken — no, this is the defendants' motion to limit the evidence about value. I think that will be reserved until we see the materiality of it on the trial, just judgment reserved until you see the circumstances of the evidence presented. Reserved.

MR. STRASBURGER: Your Honor, if we can go back, on those categories that you mentioned, we want to take these depositions and we want to be certain they are in line with your order, and you mentioned three categories, and yet that leaves us to interpret what portion of the motions were granted. You divided it up into categories, and they don't in their motions.

THE COURT: Yes, they do in the brief.

MR. WEST: In our brief, we categorized them.

MR. BRIN: Well, in their brief, they categorized the interrogatories.

THE COURT: You are not going to have any trouble because I excluded all transactions dealing with this property prior to the day we took it, and this declaration of taking was filed in toto except merely the contract and the names of the parties to it.

MR. BRIN: But we may inquire about those of the witnesses?

THE COURT: Yes.

MR. BRIN: That is what we wanted to get clear, Your Honor.

THE COURT: Yes, indeed.

MR. WEST: May I understand that they may inquire about them to the extent of obtaining the contract and the names of those who are parties to it?

THE COURT: That is right, share the obligations to that contract. In other words, somebody who has got an

interest adverse to their position here isn't going to sit on the jury, and if some of those people take that witness stand, I am going to impeach them.

MR. WEST: It is simply the ascertainment of the names that are inquired about, and they may not call him in and ask him why he did or the extent of his interest in it?

THE COURT: No, no, wholly out, wholly out. That is a very simple ruling. That is all that comes in, prior to the declaration of taking, except, of course, your proof on market value.

Now, the defendants' motion to dismiss or abate because of the non-joinder of these parties served by mail. Now, I will overrule the motion in so far as it covers everybody but Jayson, and I want to remind Counsel for both sides here that Robert Jayson and wife, Louise Jayson, and William K. Jayson and wife, Annette Jayson, took $171,880 out of the registry of this Court upon my order upon the representation to me that they were the owners in fee simple of this land subject to leasehold estates by Jayson Manufacturing Company, Clare Dress Company of Texas, Inc., and Gall Novelty, Inc. Now, are they or aren't they the owners in fee simple of that tract?

MR. STRASBURGER: Judge, that was done before I came in the case, and it is my understanding that the mother, furnishing the money, gets 20 percent of the income and pays 20 percent of the expenses.

THE COURT: I don't think that is ownership as this Statute contemplates because it says plainly record owners and owners of interests that otherwise obtain and any contract sharing that they have got with their mother in my opinion is not such an interest as it would prevent the Government from obtaining fee simple title to this land under the proceedings had here and certainly not unless Robert Jayson and William K. Jayson and their wives —

MR. STRASBURGER: As a matter of fact, Your Honor, we came into it late, but I understand that the title is in the name of Robert, has been all along.

THE COURT: Well, these people came here and represented that they were the fee simple owners of this land.

MR. STRASBURGER: Correct.

THE COURT: They took $171,000 from the Court. Now, as I understand it, they have just got a profit sharing arrangement with their mother. Isn't that it? The fact she gave them the property doesn't mean a thing if they are going to pay her something out of the —

MR. STRASBURGER: They don't have anything in writing. I asked them about that. But the income tax returns do.

THE COURT: I overrule the motion. In view of the record here, I find that Robert Jayson and wife, Louise Jayson, and William K. Jayson and wife, Annette Jayson, are fee simple owners of the land subject to the leases just mentioned.

MR. STRASBURGER: The mother is 20 percent owner.

THE COURT: Yes. They bought it with the provision she gets 20 percent of the proceeds out of the property.

MR. STRASBURGER: No. She owns the property. That is the way the income tax returns are. I haven't seen them. I think it would make her an equitable owner. She got her gain and stood her losses. I don't know.

MR. WOODLOCK: Your Honor, we can make her a party if they will waive service. If she has been prejudiced by the delay —

THE COURT: I take it they gave her 20 percent of this $171,800.

MR. STRASBURGER: It would be my guess. They should if they didn't.

THE COURT: Do you want to file anything here showing her ownership? In other words, what is before me with this motion is that your clients have said that they have owned the fee simple to it. Now, if they don't own

the fee simple, if they want to amend their answer and join her in it and show that they don't own but 80 percent of this property and show that she got her share of it under arrangements that would amount to an equitable title in her, I don't know from what you have said whether she had equitable title or whether she didn't. I don't know what arrangements she had with them.

MR. STRASBURGER: Judge, I don't represent her. All I have done is talk with these two fellows that I do represent, and I have tried to bring all of the facts as near as I could to the attention of everybody.

THE COURT: Well, I will find that she doesn't own any of the property, then, and overrule this motion on the statement of her children. Go ahead. Request for leave to file first amended original answer is granted.

Now, incidentally — just a minute.

(Discussion off of the record.)

THE COURT: Paragraph 4, you move to strike it?

MR. WEST: Yes, sir.

THE COURT: It is stricken. All of the rest of it is proper.

MR. WOODLOCK: Five is evidentiary, Your Honor.

THE COURT: I don't mind that. I have just stricken Paragraph 4.

MR. STRASBURGER: Judge, could I be excused just a minute?

THE COURT: Let's give everybody a recess. Would you like to have a coffee break?

(Recess.)

THE COURT: How many experts for each defendant? We are down for that. How many experts do you want?

Just a minute.

(Discussion off of the record.)

THE COURT: Instead of the number of experts will be so many and rebuttal witnesses will be permitted in the discretion of the Court, I will strike that and put in there the names of the expert witnesses for all parties will be exchanged not later than five days from the date of this order so that you will provide each with a list of who they are under this authority I have cited. That will leave you time enough.

(Discussion off of the record.)

THE COURT: When do you want them set?

MR. STRASBURGER: We can take them one a day. It will be all right with me more frequently, anyway.

(Discussion off of the record.)

THE COURT: 1:30 tomorrow depositions are set.

(Discussion off of the record.)

I, Richard Allen Ward, certify that during the Pre-Trial of the foregoing styled and numbered cause, I was the official stenotype reporter and took in stenotypy the proceedings of said Pre-Trial, and have transcribed the same as shown by the above and foregoing 19 pages, and that said transcript is true and correct.

THIS 19th day of August, 1965.

RICHARD ALLEN WARD

Official Court Reporter,
Northern District of Texas

STATE OF TEXAS }
COUNTY OF DALLAS }

Subscribed and sworn to before me by Richard Allen Ward on this the 19th day of August, A.D. 1965.

CECIL J. TOWRANCE

Cecil J. Towrance, Notary Public
in and for Dallas County, Texas.

B-1

APPENDIX B

FASTEN PLAT, ETC. HERE	GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE WASHINGTON 25, D. C. **SITE PROPOSAL**	SYNOPSIS NUMBER #-20

In response to your invitation for offers of property for the Federal building at the location shown below, the undersigned hereby proposes ~~to sell or donate to the United States of America, for the amount specified~~, the following described land (clear building space, exclusive of sidewalks, etc.)

LOCATION (City, county and state)	PRICE OF LAND
Dallas, Dallas County, Texas	See attached proposal

DESCRIPTION OF LAND

See Attached Proposal

and as shown by the attached plat on which is indicated the correct widths of public streets and alleys abutting the site; together with all of the improvements thereon, except the following

See Attached Proposal

SIGNATURE	Check whether ☐ OWNER OR ☐ AGENT	DATE SIGNED
See Attached Proposal	See Attached Proposal	Jan. 23, 1957

ADDRESS (Post office, street, number, city and state)

See Attached Proposal

NAME OF THE HOLDER OF THE MORTGAGE ON THE ABOVE PROPERTY (OR HIS LOCAL REPRESENTATIVE) IS

See Attached Proposal

THE MOST RECENT ASSESSED VALUATIONS OF RECORD ON THE ABOVE DESCRIBED PROPERTY ARE

LAND	IMPROVEMENTS	TOTAL	ASSESSMENT DATE
	See Attached Proposal		

~~The foregoing proposal is submitted in accordance with, and subject to, the terms and conditions of said invitation or advertisement, and the "Conditions" governing purchase of Federal building sites as set forth on the reverse of this form.~~

IMPORTANT NOTICE TO BIDDERS

1. There must be attached to the proposal a plat showing the dimensions of the property offered and widths of all abutting streets and alleys. Such dimensions shall describe clear building space exclusive of sidewalks.
2. If the vendor desires to reserve any building or other improvements on the site it is important that he describe the same in the above space provided for that purpose, otherwise this proposal is for land, together with all the buildings and improvements thereon.
3. ~~The "Conditions" on the reverse of this proposal are incorporated by reference in the proposal. As these "Conditions" constitute important contractual provisions setting forth in detail the obligations of the bidder, it is of extreme importance that they be carefully read prior to the submission of the proposal.~~

(Over)

GSA FORM 186
August 1950
(Formerly Form 2-72-A)

CONDITIONS

1. PRICE ADJUSTMENT IF LESS AREA. In the event that the land conveyed has less area (clear building space, exclusive of sidewalks, etc.) than indicated by the dimensions given in the description furnished in the proposal, an equitable reduction shall be made in the amount of the purchase price. The foregoing provisions of this paragraph shall not obligate the United States to conclude the purchase of a lesser area than that described in the proposal.

2. TITLE. Within 30 days from the date of the letter of acceptance, and without additional expense to the United States, the vendor shall cause to be executed and delivered all abstracts or certificates of title, plats, maps, official certifications, affidavits, evidences of title, deeds of conveyance, etc., necessary in the opinion of the Attorney General, to convey to the United States of America a valid and satisfactory title to said land clear of all mineral rights, easements, restrictions, leases, judgments, taxes, and assessments, existing or inchoate, liens, or incumbrances of any sort, at the date of the transfer of the title to the United States. The vendor shall so furnish said title papers, etc., as to make the same in every respect satisfactory to the Attorney General of the United States. The deed to the United States of America shall be typewritten, and the consideration stated in such deed shall be the actual consideration paid by the Government, irrespective of any consideration or payment from other sources to the vendor. (It is not necessary to discharge liens and mortgages until the transfer of title to the Government is about to be made.)

3. SURVEY. Within 30 days from the date of the letter of acceptance, and without expense to the United States, the vendor shall furnish a careful survey of said site, based on the local land records as required by 'Specification for Vendor's Survey' (Form No. 8835-A); have the surveyor set permanent stone or concrete markers at each corner, or bound, of the land; have the description in the deed to the United States conform to the actual measurements and refer to the monuments utilized by the surveyor. Such survey, etc., shall be first submitted to the General Services Administration at the earliest practicable date, and all required corrections therein including the setting of said monuments shall be promptly made to the satisfaction of the Administrator of General Services or his duly authorized representative.

4. CONTINUATION OF ABSTRACTS, ETC. Immediately preceding the payment of the purchase money, the vendor shall have said abstracts or certificates of title continued down to, and including, the date of the recording of the deeds, etc., to the United States and show such recordations and also have appended to said abstracts or certificates of title the proper official certification showing that all taxes, special assessments, existing or inchoate charges, liens, judgments, conveyances, mortgages, or incumbrances of any character whatsoever, standing as a charge against any part of said site at, or before, the date of recordation of said deeds to the United States, etc., have been duly paid, discharged, and released of record, so that an absolutely clear title to the whole of said site without restriction or reservation of any nature, shall then be vested in the United States; all without additional expense to the United States.

5. CONDEMNATION. That in case, in the opinion of the Administrator of General Services, it becomes desirable to condemn the lands described in this proposal, the contract resulting from acceptance of this proposal may be entered in the condemnation proceedings as a stipulation for the purpose of fixing the contract price as fair, just and reasonable consideration for the lands described, and providing that any and all awards of just compensation that may be established by judgment in the court in behalf of any and all persons, corporations and associations other than the vendor, shall be deductible from the said contract price, and the vendor consents to such judgments, if any, and agrees to accept the balance of said contract price remaining after the payment and deduction therefrom of the amount or amounts of any and all such awards, as full and just compensation for the taking of the described lands.

6. DEDICATIONS AND VACATIONS. The vendor shall furnish promptly upon the request of the United States Attorney, such duly authenticated evidence as may be required by the Attorney General satisfactorily to establish that the public alleys and roadways abutting the site, as shown in the proposal, have been duly dedicated to the public and legally accepted by the proper authorities of the municipality in which said site is situated, and that the same have been actually opened and will be kept open and improved as are other public streets and alleys in said municipality. In the event that any such alleys or, roadways have not been so dedicated to the public and legally accepted as aforesaid, the vendor agrees that he will cause the same to be duly dedicated and legally accepted. Also, should the vacation of any alley, passageway, or street, or portion of such alley, passageway, or street, now lying within the area comprising the entire site, be required to vest in the United States a valid unencumbered title to the entire site, the vendor must procure such vacation and furnish similar evidence of the due accomplishment thereof, without expense to the United States.

7. CONDITIONS ENTIRE SITE TO BE ACQUIRED. If the proposed site is composed of more than one parcel of land, the General Services Administration shall be under no obligation to acquire any parcel until the Attorney General shall have rendered a favorable opinion on the title to all the parcels embraced in the entire tract to be acquired; and, where any portion of the site is to be acquired by condemnation proceedings, the General Services Administration shall not be required to conclude the purchase of any parcel until the award in condemnation shall have been rendered and found to be in an amount satisfactory to that Administration.

8. CLEARING OF SITE: (a) Upon thirty (30) days' notice in writing so to do after title to the land comprising the site has vested in the United States, the vendor shall be obligated, without expense to the United States and to the satisfaction of the custodian of the site (1) if buildings or other improvements have been reserved by the vendor, to remove the same down to ground level; and (2) if buildings or other improvements have been reserved by the vendor or if the site is unimproved, to remove all tracks, poles and wires (overhead or underground), all gas, water and heating pipes, ducts, etc., conduits, ditches and sewers crossing the site or, in lieu of removal thereof, to plug at the lot lines any such pipes, ducts, conduits or sewers.

(b) Immediately after title to such land has vested in the United States (or, if removal of reserved buildings or other improvements shall thereafter create a dangerous condition, then immediately after such condition is created), the vendor shall, without expense to the United States, rail off or cover, to the satisfaction of the custodian of the site, all open wells, cellars or other excavations on the site.

(c) Before payment is made to the vendor, the vendor shall furnish a good and sufficient bond (in such amount as the United States Attorney may deem ample) to guarantee to the United States the performance of all of the obligations of the vendor as set forth in subparagraphs (a) and (b) of this paragraph 8.

(d) If the vendor shall fail to comply with any of the obligations set forth in subparagraphs (a) and (b) of this paragraph 8, the Government, if deemed in its interests by the Administrator of General Services or his duly authorized representative, may perform the work, sell or dispose of any buildings or other improvements, or any portion thereof, and collect from the vendor or the obligors on the bond referred to in subparagraph (c) of this paragraph 8 all costs incurred in excess of the proceeds of any such sale.

9. GROUND RENTAL. In the event that the buildings on the land are reserved to the vendor, a reasonable ground rental shall be paid by the vendor to the United States for the period from the date title to the land is vested in the United States until the date of service of the thirty (30) day notice to clear the site or until the site has been cleared by the vendor, whichever date is the earlier.

10. RENTAL - LAND AND BUILDINGS. When buildings and improvements are not reserved by the vendor a reasonable rental for the land and buildings shall be paid by the vendor to the United States for the period from the date title to the land is vested in the United States until the date of vacation of the premises.

11. ATTEMPTED VARIATIONS. That no variation or departure from the terms of the contract of which these 'Conditions' form a part will be binding on the United States unless previously agreed upon in writing by the Administrator of General Services or his duly authorized representative.

12. The vendor represents and it is a condition of acceptance of this proposal that no Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or agreement, or to any benefit that may arise thereupon; but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit.

GSA-WASH DC 52-9046

Dallas, Texas
January 23, 1957

PROPOSAL

1. PURPOSE OF PROPOSAL

This proposal is submitted to the General Services Administration pursuant to the next to the last paragraph of its advertisment, published on January 1, 1957, and succeeding dates, with respect to a proposed federal office building at Dallas, Texas.

2. NATURE OF PROPOSAL

This proposal is submitted to enable General Services Administration to avail itself of the opportunities for estimated savings of $5,662,500.00 available in the continued use and remodelling of their presently owned building at 1114 Commerce Street, in City Block 63, Dallas, Texas, and to insure such agency the purchase of adjoining property for new and additional buildings or building at a guaranteed price. This adjoining property will have to be acquired by or on behalf of the Federal Government by negotiation as described in the letter of guaranty attached hereto or by condemnation proceedings. None of the parties submitting this proposal owns any of the parcels of land to be acquired or any interest therein, or has authority as agent or otherwise to sell, offer for sale or donate such properties.

3. ADVANTAGES OF PROPOSAL

Some of the advantages inherrent in the selection of one of the sites herein proposed are as follows:

1. Remodelling and continued use of the present government building at 1114 Commerce Street will save the taxpayers an estimated $5,662,500.00. This fact is substantiated by a careful engineering survey made at your suggestion by the outstanding engineering firm of Frank W. Chappell.

2. The entire central downtown area and other commercial interests would likely share more equitably in the advantages generated by the Dallas Federal Center and its personnel because of this location. Practically every major business in Downtown Dallas is located within twenty-five hundred feet of the location proposed.

3. There are ample parking facilities within short walking distance and more are planned.

4. Available public transportation and traffic flow make the site proposed most accessible to all residential areas in which government employees live or are likely to live.

5. Regional accessibility from all directions is insured by a fine network of highways and rail and bus facilities which are most convenient to the site.

6. Existing public utilities at the site are ample for the building proposed and selection of the proposed site would not result in expense to the City of Dallas.

7. Development plans for the section of the City of Dallas concerned are such that the proposed location will be in the very center of a most attractive and accessible area.

These advantages have been brought out in greater detail in a formal brochure previously presented to you, a copy of which is attached hereto and made a part hereof.

4. DESCRIPTION OF PROPERTY

Three different size tracts, each of which adjoins the present Government Building at 1114 Commerce Street, are hereby proposed for consideration. These tracts are described as follows:

TRACT ONE

A tract of land adjoining the United States Government's building at 1114 Commerce Street on the West, and extending westerly therefrom along the South line of Commerce Street for a distance of 225 feet, then southerly along the established property line 200 feet to the North line of Jackson Street, then easterly along the North line of Jackson Street 210 feet to the said Government building, the East boundary of said tract being the same as the West line of the Government's property, being

Lots 6, 7, 8, 9, 10, 11 and 14 in Block 63 of the City of Dallas, Texas, and containing approximately 43,500 square feet of land.

TRACT TWO

A tract of land adjoining the United States Government's building at 1114 Commerce Street on the West, and extending westerly therefrom along the South line of Commerce Street for a distance of 405 feet, then southerly along the established property line 200 feet to the North line of Jackson Street, then easterly along the North line of Jackson Street 390 feet to the said Government building, the East boundary of said tract being the same as the West line of the Government's property, being Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 17 in Block 63 of the City of Dallas, Texas, and containing approximately 79,500 square feet of land.

TRACT THREE

A tract of land adjoining the United States Government's building at 1114 Commerce Street on the West, and extending westerly therefrom along the South line of Commerce Street for a distance of 455 feet to the East line of Poydras Street then southerly along the East line of Poydras Street 200 feet to the North line of Jackson Street, then easterly along the North line of Jackson Street 440 feet to the said Government building, the East boundary of said tract being the same as the West line of the Government's property, being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 17 in Block 63 of the City of Dallas, Texas, and containing approximately 89,500 square feet of land.

5. GUARANTEED COST OF TRACTS.

The proponents of this proposal hereby undertake to guarantee that the parcels of land comprising each tract described above can be acquired by the Federal Government by negotiation as described in the letter of guaranty attached hereto or by condemnation for an aggregate price for each tract as set out below:

Cost of Tract One is guaranteed not to exceed $385,000.00.

Cost of Tract Two is guaranteed not to exceed $1,655,000.00.

Cost of Tract Three is guaranteed not to exceed $2,000,000.00.

These guaranteed costs represent official Dallas Real Estate Board appraisals plus approximately ten percent. Experience has shown that the cost of

property acquired by the Government through condemnation proceedings has rarely exceeded ten percent of local real estate board appraisals. Copies of these appraisals covering each parcel of land in the three tracts are attached.

In addition to the ten percent margin included in the above guaranteed costs, there is attached hereto a letter of guaranty signed by the proponents hereof in the amount of $200,000.00 to cover any amount up to that sum, but limited thereto, which may have to be paid by the Federal Government to acquire any one of the described tracts of land in excess of the guaranteed amount shown opposite each tract above.

It is our understanding that the precise form of this guarantee will be worked out between counsel in the event that the General Services Administration indicates its interest in this proposal, but the availability of a collectible and valid guarantee is hereby assured.

6. COOPERATION

The proponents hereof assure the General Services Administration of their full cooperation in working out any details of the acquisition of the property proposed herein and the erection of the Federal Center thereon which they as citizens of Dallas may properly perform.

7. ATTACHMENTS HERETO

Annex 1. Letter of Guaranty described in Section 5 above.

Annex 2. Photostatic copy of a letter from the Director of Planning of the City of Dallas.

Annex 3. Plat of property proposed.

Annex 4. Photostatic copies of official Dallas Real Estate Board appraisals covering each parcel of land covered in this proposal.

GUARANTY

For and in consideration of the selection and acquisition by the General Services Administration, an agency of the United States Government, of one of the sites proposed for the erection of the Dallas Federal Center Building in a proposal of even date herewith submitted by the undersigned, we hereby guarantee, subject to the limitations and conditions listed below, that the acquisition cost of each of the tracts of land proposed as a site for said building will not exceed the amount set opposite each:

Guaranteed cost of Tract 1	$ 885,000.00
Guaranteed cost of Tract 2	1,665,000.00
Guaranteed cost of Tract 3	2,000,000.00

This guaranty is to insure the General Services Administration against excess cost of acquisition of any one of the above tracts of land, up to, but not exceeding, the sum of Two Hundred Thousand Dollars ($200,000.00) over the cost guaranteed above. The aggregate amount of this guaranty is specifically limited to a maximum of the lesser of (1) Two Hundred Thousand Dollars ($200,000.00), or (2) the excess of the cost of any one of the above tracts of land acquired over the above stated guaranteed cost, and the liability hereunder of each of the undersigned is specifically limited to that percentage respectively set opposite the name of each of the undersigned of said maximum aggregate amount of this guaranty.

This guaranty will be valid only if no parcel of land covered by the proposal of which this instrument is a part is purchased by General Services Administration at a price greater than the Dallas Real Estate Board Appraisal attached hereto covering such parcel except in accordance with a final judgment of a court of competent jurisdiction entered in a condemnation suit instituted by it to acquire such parcel.

While this guaranty shall be a continuing guaranty upon the conditions and under the limitations herein set forth, unless the said General Services Administration shall have acquired legal title to one of the aforesaid three tracts for the aforesaid purpose within three years from the date hereof, this guaranty shall on the third anniversary of the date hereof become null and void and of no further force and effect.

Witness our hands at Dallas, Texas, this the 23rd day of January, 1957.

Signature - Percentage of Guaranteed Aggregate Amount.

W. W. Overton, Jr. 12½

Annex 1.

L. F. Corrigan — 17½%

C. C. Simmons — .06¼%

E. V. McCright — 10%

R. W. Baxter — 6¼%

H. L. Moses — 2½%

Eugene Kahn Sanger — 2½%

Cecil M. Higginbotham — 5%

Drake McKee — 2½%

Trammell Crow — 2½%

Justin S. McCarty — 2½%

John D. Murchison — 12½%

H. D. Lowry, Jr. — 2½%

Sam R. Bloom — 15%

Annex 5. Copy of brochure previously submitted.

Respectfully submitted,

W. A. Carter, Jr.

L. F. Corrigan

C. A. Sammons

E. V. McCright

R. W. Baxter

M. S. Moses

Eugene Kahn Sanger

Cecil M. Higginbotham

Drake McKee

Trammell Crow

Justin S. McCarty

John D. Murchison

L. D. Lowry, Jr.

John R. Bloom

APPENDIX C

December 24, 1957

Colonel Karl E. Wallace
Regional Commissioner
General Services Administration
1114 Commerce Street
Dallas 2, Texas

Dear Sir:

The undersigned (herein called Guarantors) in order to induce the United States of America (herein called Government) to select and acquire the hereinafter described property as a site for a Federal Building and in consideration of the selection and acquisition of said property for such purpose, hereby guarantees, covenants and agrees as follows:

1. The property proposed herein is described as follows: A tract of land adjoining the United States Government's building at 1114 Commerce Street on the West, and extending Westerly therefrom along the South line of Commerce Street for a distance of 300 feet, thence Southerly along the established South property line of Lots 5 and 15, 200 feet to the North line of Jackson Street, thence Easterly along the North line of Jackson Street 285 feet to the said Government building, the East boundary of said tracts being the same as the West line of the Government's property, and being Lots 5, 6, 7, 8, 9, 10, 11, 14 and 15 in City Block No. 63 of the City of Dallas, and containing 58,500 square feet of land, more or less.

2. Guarantors shall and do hereby jointly and severally guarantee that the acquisition cost of said property shall not exceed the sum of ONE MILLION DOLLARS ($1,000,000.00). In the event the acquisition cost exceeds One Million Dollars, Guarantors shall pay the Government, or at the direction of the Government, all sums in excess of One Million Dollars necessary to acquire full fee simple title to said property.

3. The Government shall acquire the property by purchase from the owners thereof or by condemnation. If acquired by purchase, the Government shall not pay more for the following described lots than the amount set opposite each lot, without receiving the prior approval of Guarantors:

Lot No. 5	$195,000.00	Lot No. 9	$102,500.00
Lot No. 6	$190,000.00	Lot No. 10	$100,000.00
Lot No. 7	$180,000.00	Lot No. 11	$180,000.00
Lots No. 8 & 14	$100,000.00	Lot No. 15	$ 90,000.00

For the purpose of considering any proposals of the Government to purchase at a price in excess of those in this paragraph above stated, Guarantors shall appoint from their number a committee of four, who shall be authorized to act for and on behalf of all the Guarantors, and approvals given by said Committee shall be binding on all Guarantors. Names of the Members of said Committee shall be furnished Government in writing.

Subject to the limitations of this paragraph, Government shall have a completely free hand in the acquisition of said property and in making all decisions in connection therewith, including but not limited to the price and manner of acquisition, Government shall, however, use its best efforts to acquire the property at the lowest, fair and reasonable price.

4. In the event of condemnation, Guarantors shall not be required to bear the cost of the condemnation proceedings.

5. Guarantors shall pay any amount due hereunder as, when, to the parties, and in the manner directed by the Government.

6. Guarantors shall execute and deliver such additional agreements, instruments and guarantees as required by the Government to carry out the provisions and intent of this instrument, and the availability of a collectable and valid guaranty is hereby assured.

7. This contract and the covenants, agreements and guarantees herein contained shall be binding on the Guarantors,

jointly and severally, and their heirs, assigns, administrators, executors, and legal representatives.

8. While this guaranty shall be a continuing guaranty, upon the conditions and under the limitations herein set forth, unless the Government shall have contracted to acquire legal title to the said property or has commenced a condemnation suit for the purpose of acquiring said property within two years from the date hereof, this guaranty shall on the second anniversary date hereof become null and void and of no further force and effect.

WITNESS our hands at Dallas, Texas, this the 24th day of December, 1957.

Trammel Crow	W. W. Overton, Jr.
Justin S. McCarty	L. F. Corrigan
John D. Murchison	C. A. Sammons
Sam R. Bloom	E. V. McCright
W. C. Stevens	R. W. Baxter
M. E. Moses	Eugene Kahn Sanger
Cecil M. Higginbotham	Drake McKee

APPENDIX D

COURT OF CLAIMS

In the UNITED STATES COURT OF CLAIMS

No. 332-66

ROBERT JAYSON, et al.

v.

THE UNITED STATES

Before COWEN, Chief Judge, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON, and NICHOLS, Judges.

ORDER

This case comes before the court on defendant's motion, filed November 21, 1966, to dismiss or for summary judgment. Upon consideration thereof, together with the opposition thereto, without oral argument, it is concluded that plaintiffs' alleged claim is barred by the doctrine of *res judicata* by the prior proceedings in the United States District Court for the Northern District of Texas and the Court of Appeals for the 5th Circuit. See *Jayson v. United States*, 294 F. 2d 808 (5th Cir. 1961).

IT IS THEREFORE ORDERED that defendant's motion for summary judgment be and the same is granted and the petition is dismissed.

BY THE COURT

Wilson Cowen
Chief Judge

APPENDIX E

COURT OF CLAIMS

In the
UNITED STATES COURT OF CLAIMS

622-52 MARTIN VON CARSTANJEN
277-63 WEST VIRGINIA NORTHERN RAILROAD COMPANY
350-63 THEODORE MORSE AND CLAIRE MORSE
248-65 JOHN P. KING
332-66 ROBERT JAYSON, et al.
251-67 JAMES L. HAMLIN
406-67 LAWRENCE ELLIS MYERS

v.

THE UNITED STATES

Before COWEN, Chief Judge, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON and NICHOLS, Judges, except that Judge DAVIS took no part in the consideration and decision of No. 622-52.

ORDER

These cases come before the court on motions to vacate or set aside judgments, for oral argument, for reconsideration, to alter judgment, for rehearing, and for further relief under Rules 68 and 69 of the rules of this court and, on consideration thereof,

IT IS ORDERED this 14th day of June, 1968, that said motions be and the same are denied as follows:

622-52 Martin von Carstanjen. Plaintiff's motion to vacate judgment entered for failure to prosecute and plaintiff's motion for oral argument.

277-63 West Virginia Northern Railroad Company. Plaintiff's motion for reconsideration and to alter judgment.

350-63 Theodore Morse and Claire Morse. Defendant's motion for reconsideration.

248-65 John P. King. Defendant's motion for reconsideration.

332-66 Robert Jayson, et al. Plaintiffs' motion to set aside summary judgment under Rule 69(b).

251-67 James L. Hamlin. Defendant's motion for reconsideration.

406-67 Lawrence Ellis Myers. Plaintiff's motion for rehearing and altered or amended order.

BY THE COURT

/s/ WILSON COWEN

Wilson Cowen
Chief Judge

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON and JENNIE JAYSON, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In 1958, the United States instituted condemnation proceedings to acquire a parcel of land containing a five-story building owned by petitioners in Dallas, Texas. This parcel, along with others adjacent to the existing post office building, was being acquired for the erection of a federal office building (now under construction). Petitioners challenged the validity of the taking because the General Services Administration had accepted an offer by a syndicate of individ-

uals interested in having the federal building located on this site to indemnify the government if the cost of this and the adjacent properties exceeded a certain amount. Petitioners moved to join the members of the syndicate in the proceeding and sought oral depositions and interrogatories pertaining to the selection of the site. The government moved for judgment on the pleadings as to the right to condemn the property, asserting that no legally sufficient defense had been raised. The district court granted that motion and denied petitioners' motions. The court ruled that Congress had given the Administrator of the General Services Administration the power to negotiate for the purchase of property and to select property for condemnation and that his action in that regard was not subject to review by the courts (Pet. App. A5-A6).

Following a trial of the issue of just compensation, final judgment in condemnation was entered on May 23, 1960. A motion for new trial raising, among others, the issue of indemnification was denied. *United States* v. *Certain Land in the City and County of Dallas, Texas*, Civil No. 8072, N.D. Tex. On appeal by petitioners, the Fifth Circuit affirmed the trial court's rulings. *Jayson* v. *United States*, 294 F.2d 808. No review by this Court was sought. Upon remand, petitioners filed a motion to set aside the judgment under Rule 60(b), F.R.Civ.P., again alleging the existence of the indemnification agreement. The district court found that there had been no fraud, misrepresentation or other misconduct on the part of the United States or its representatives, that no new-

ly discovered evidence had been presented, and that "[a]ll issues presented by this motion were made, adjudged and fairly open for adjudgment in the prior litigation" and denied the motion. No appeal was taken.

Thereafter, petitioners filed an action in the United States District Court for the District of Columbia to enjoin the Administrator of the General Services Administration from proceeding with the project. *Jayson* v. *Knott*, Civil No. 1751-65. Petitioners again referred to the indemnification agreement and charged the government officers with conspiracy in connection with the condemnation. The dismissal of that action was affirmed *per curiam* by the United States Court of Appeals for the District of Columbia Circuit on April 28, 1966, on the ground of *res judicata*. *Jayson* v. *Knott*, No. 19,768.

On September 19, 1966, petitioners instituted this action in the Court of Claims seeking $370,000, which they asserted was the difference between the condemnation award of $380,000 and the value of the property. They again recited the government's acceptance of the syndicate's offer of indemnification and charged collusion and lack of due process. The Court of Claims granted the government's motion for summary judgment on the ground that the petitioners' claim is barred by the doctrine of *res judicata* (App. D1). Motion for reconsideration was denied (App. E1).

The decision of the court below that petitioners' suit was barred by *res judicata* is clearly correct. Petitioners presented their claim of impropriety in

the indemnification agreement during the course of the condemnation proceedings. When the district court and the court of appeals ruled adversely to petitioners in that action, they could have sought certiorari in this Court. As it was, the judgment became final. Petitioners were, therefore, barred from relitigating that issue in a new action. *Jackson* v. *Irving Trust Co.*, 311 U.S. 494, 503.[1]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1968.

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[1] It should also be noted that there was no impropriety in the indemnification agreement to which petitioners refer. The government clearly had the right to condemn property for a needed federal building. The fact that the government was able to obtain a guarantee as to cost from local businessmen who believed they would be benefited by having the federal building located in a certain area did not defeat the government's right to exercise its power of condemnation. Cf. *Berman* v. *Parker*, 348 U.S. 26; *United States ex rel. T.V.A.* v. *Welch*, 327 U.S. 546, 554.

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No. 590

In the

Supreme Court of the United States

OCTOBER TERM, 1968

ROBERT JAYSON, WILLIAM K. JAYSON AND JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Claims

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

O. P. EASTERWOOD, JR.,
Barr Building,
Washington, D. C.

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.

THE WARLICK PRESS DIVISION, STECK-WARLICK CO.
P. O. BOX 10543 — 2263 VALDINA STREET — DALLAS — ME 1-3130

In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 593

ROBERT JAYSON, WILLIAM K. JAYSON AND JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Claims

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REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Constitutional questions arising from the issues involving the wilful violation of the United States Statutes (USCA Title 40, Section 352) and the regulations thereunder requiring that proposals submitted by other than the title owners must be accompanied by documents showing their authority, have never been adjudicated, and the due process of law has been denied petitioners.

This requirement was flagrantly violated by the "syndicate" and accepted by the General Services Administration for respondent. (See Appendix B and C to petition.)

The "syndicate" offered property which it did not own nor have any authority over, and fixed a ceiling price to the respondent, all of which the respondent knew at the time of the offering. This action formed the base for the subsequent events which could not be made legal or equitable by any subsequent proceeding, being in the inception a harsh violation of the due process clause, Amendment V, the statutes cited and the decision in *O'Neill v. Leamer*, 239 U.S. 244, in which cardinal principles are stated:

> "No man can be coerced into corporate relations with others, and to assume and perform the duties and burdens of that relation."
>
> "Dissenting landowners are rendered incapable of making a protest or of uttering a syllable against the enterprise. That, too, renders the act void."

The respondent endorses the guarantee by the "syndicate". This was a conditional guaranty fixing a total price and on property not owned by any member of the "syndicate", in violation of Title 40 Sec. 298(a), USCA. (Repealed September 9, 1959, 73 Statutes 486.)

The site proposal (Appendix B and C to the petition) was not known to petitioners until April 4, 1961, after the original action in the United States District Court in March, 1960, which judgment foreclosed all consideration of any matter by summary pre-trial order of the trial court (Appendix "A" to petition) and petitioners have never been

given their day in court as to the issues involved in the site proposal and the conditional guaranty, which denial has been arbitrary, capricious, and displays bad faith in respect to petitioners' constitutional rights.

Evidence that the site proposal and the guaranty were more than just irregular is found in Volume 107 of the Congressional Record, pages 10417-10437 of June 26, 1961.

CONCLUSION

The material issues arising out of the void proposals and the conditional guaranty in violation of the cited statutes and the due process clause, having never been adjudicated, cannot be barred by the public policy doctrine of res judicate. The petition for writ of certiorari should be granted.

Respectfully submitted,

O. P. EASTERWOOD, JR.,
Barr Building,
Washington, D. C.

Prepared By:

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.

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In the

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OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON, JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

APPLICATION FOR REHEARING

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

O. P. EASTERWOOD, JR.,
Barr Building,
Washington, D. C.

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.

THE WARLICK PRESS DIVISION, STECK-WARLICK CO.
P. O. BOX 10543 — 1455 ROUND TABLE DRIVE — DALLAS — NE 1-3130

In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON, JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

PETITION FOR REHEARING

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Within the extension of time granted to petitioners to file their petition for rehearing to and including February 26, 1969, this their petition is herewith filed and with the prayer that the previous action of this Court be reconsidered and set aside and a writ of certiorari issue to review the judgment of the United States Court of Claims entered as reported in that Court No. 332-66, and order of that Court in overruling petitioners' motion to set aside summary judgment under Rule 69(b) of the Court of Claims entered June 14, 1968.

OPINIONS BELOW

In *Jayson v. United States*, 294 F. 2d 808 (5th Cir. 1961) the judgment of the United States District Court for the Northern District of Texas, Dallas Division, in Civil Action No. 8072, United States of America, plaintiff, v. Certain Land in the City and County of Dallas, State of Texas, and O. E. Padgitt, et al., was affirmed.

In Robert Jayson, et al., appellants, v. Lawson B. Knott, individually, appellee, No. 19,768, Civil 1751-65, in the United States Court of Appeals for the District of Columbia Circuit, September Term, 1965, the judgment of the United States District Court for the District of Columbia dismissing the suit was affirmed, denying appellants relief.

JURISDICTION

The jurisdiction of this court is invoked under 28 USCA 1255(a).

QUESTION PRESENTED

Whether private citizens by conspiracy, collusion and fraud with an agency of the United States Government can with impunity violate United States statutes and the United States Constitution, and then by artful design deprive other citizens of their property without any due process of law?

CONSTITUTIONAL PROVISIONS

This petition involves Amendment V, "nor be deprived of life, liberty, or property, without due process of law;" of the Constitution of the United States.

STATUTES INVOLVED

United States Code, Title 40, Sections 257, 258(a), 298(a), 352; 69 Statutes 458, 72 Statutes 1066; Section 101 of Public Law 519, 83rd Congress, and Title I of Public Law 519, 83rd Congress.

STATEMENT

1. The petitioners are individuals and residents of the city and county of Dallas in the State of Texas.

2. (Note: Exhibits referred to under this Statement are all in the petition for writ of certiorari.)

3. Prior to January, 1957 the petitioners had acquired by purchase the fee simple title to improved real property in Dallas County, Texas known as 1021 Commerce Street, Dallas, Texas and described as Lot 6, Block 63 in Original City of Dallas, containing 10,000 square feet of land, for a consideration of $200,000.00.

4. This Lot 6 has commercial improvements, being a five story brick building with a basement. The building contains 65,000 square feet of floor space, including a balcony over the first floor with 5,000 square feet. Approximately $180,000.00 in improvements were made to the building by petitioners in-

cluding airconditioning, new elevators, new electrical wiring and plumbing, new flooring and ceilings. Part of this space was occupied by petitioners but most was lessee occupied or available for leasing.

5. Prior to 1957 a group of powerful real estate promoters had formed a syndicate and were acquiring entire blocks in the area adjoining Block 63 at an estimated value of $60,000,000.00 and continued their acquisitions by an estimated value of $14,000,000.00. Block 63 includes 1114 Commerce Street which is the present existing property for officers of the defendant in Dallas, Texas other than the Post Office and the Terminal Annex.

6. In January, 1957 the defendant, through the General Services Administration, published an Advertisement For Federal Building Site, GS-1058; a copy attached as Exhibit "A". This advertisement defined the boundaries of the area within which the site would be selected upon the bid opening at 2:00 P.M. CST on January 24, 1957, Exhibit "E".

7. The invitation for bids, Exhibit "A", contained the following provision:

> "Owners may submit their own proposals. Proposals submitted by agents must be accompanied by documentary evidence of authority."

8. Prior to the bid opening the syndicate had been in conference with the defendant through the General Services Administration, which is evidenced by their admission in the proposal dated January 23, 1957, a copy of which is attached as Exhibit "B", page 2 thereof;

"These advantages have been brought out in greater detail in a formal brochure previously presented to you, a copy of which is attached hereto and made a part hereof."

The proposal as submitted, Exhibit "B", on GSA Form 105 did not comply with the statutes or regulations governing such matters, as set out in Exhibit "C". Instructions for the submission of proposals Site Acquisition, with special reference to the first two paragraphs.

9. The syndicate violated the prohibition against modifying proposals after the time for bid opening as stated in Exhibit "C" by submitting a letter of guaranty dated December 24, 1957 to

Colonel Karl E. Wallace
Regional Commissioner
General Services Administration
1114 Commerce Street
Dallas 2, Texas

a copy of which letter of guaranty is attached as Exhibit "D", and in which the syndicate guarantees the defendent from having to expend more than one million ($1,000,000.00) dollars in acquisition of the land, including that of petitioners, and limiting the amount defendant shall pay for each lot in Block 63 without the prior approval of the guarantors. The syndicate thereby placed a ceiling upon the value and price of petitioners' land and offered it for sale without ever having communicated with the petitioners, nor did the syndicate ever have any authority to act for the petitioners in offering their property for sale or to place a value thereon. In the absence of any authority as petitioners' agents or

representatives, the syndicate impaired petitioners' rights by exerting undue influence upon the defendant to acquire Block 63, including Lot 6 of petitioners, by unlawful means and without due process.

10. Exhibit "D" violates the statute, USCA, Title 40, Section 298a, in that the guaranty stated in Exhibit "D" is conditional, in that it provided that the syndicate would contribute funds to the defendant *only if* a designated property was taken for the Federal Building. The syndicate, under this guaranty, allegedly paid the defendant $524,000, which was conditional and designed to influence, encourage and induce the defendant to take specific property owned by petitioners and others not members of the syndicate.

11. At the bid opening by defendant on January 24, 1957 only the proposal submitted by the syndicate was considered and accepted, although, according to petitioners' information and belief, the Regional Office of the General Services Administration acting for defendant, had indicated an earlier preference for a site several blocks East of that proposed by the syndicate and out of the area in which the syndicate was investing.

12. Subsequent to the bid acceptance of the proposal of the syndicate, Exhibit "B", the defendant instituted condemnation proceedings against the petitioners' property and that of the other owners in Block 63, excepting Lot 7, adjoining Lot 6 of petitioners. This part of Block 63 joins 1114 Commerce Street on the West. The syndicate by Exhibit "B" and "D" had made a guaranty of cost to the defendant upon property over which it had no legitimate control or authority

and caused appraisals to be placed upon the property based upon fictitious low value, and petitioners here and now serve notice upon defendant to produce any and all appraisals relating to the acquisition of the lots in Block 63 and especially those upon Lot 6.

13. In the condemnation proceedings in Civil Action No. 8072, United States of America v. Certain Land In the City of Dallas, Dallas County, State of Texas, O. E. Padgitt, et al., in the United States District Court for the Northern District of Texas, Dallas Division, petitioners were named defendants.

14. *In Civil Action No. 8072, the issues were limited to the amount of compensation under condemnation.* The trial court summarily and arbitrarily disposed of all questions relating to the inducement of the defendant herein by the syndicate to get defendant to select the site on Block 63. The petitioners were awarded a total sum of $380,000.00 by the court upon a jury verdict, from which petitioners' had to pay the sum of $40,000.00 to lessees of petitioners' lessees for cancellation of leases caused by the syndicate. Appeal was taken from this judgment to the United States Court of Appeals for the Fifth Circuit in No. 18604, Robert Jayson, et al., Appellants v. United States of America, Appellee, which court affirment the judgment of the trial court on October 13, 1961. As the trial court had limited the issues to the compensation under condemnation the issues relating to the inducement to the defendant in selecting this site and the violation of "due process" have never been decided. Further, petitioners did not learn of the actions of the

syndicate in the negotiations with the defendant until after the proceedings were concluded in the above suit and appeal therefrom, during which petitioners were able to obtain copies of the Exhibits attached, but not from the syndicate or the Dallas office of the General Services Administration.

15. Hearings were held by Committees of Congress concerning the irregular manner of acquisition of the property in Block 63, but no definitive action was taken to correct the irregularities but the Committees would not approve the project or appropriate the funds for construction. This is recorded in the Congressional Record, Vol. 107, dated June 26, 1961 at pages 10417-10437, inclusive, in which repeated references are made to the serious irregularities in the manner defendant acquired the site, including petitioners' property.

16. Subsequent to the proceedings in Civil Action No. 8072 and the appeal from that judgment, petitioners caused to be instituted Civil Action No. 1751-65 in the United States District Court for the District of Columbia, petitioners v. Lawson B. Knott, individually, which was a petition for injunction against defendant using the site selected, with judgment for the defendant and affirmed or appeal.

Note: All page references of Exhibits are to the original petition, which is incorporated by reference.

ADDITIONAL REASONS FOR GRANTING THE WRIT

All the reasons set out in the petiton for writ of certiorari, including all appendices, are incorporated herein by reference.

The quoted language of the trial court is again emphasized as convincing proof that the elements of the fraud and conspiracy between the syndicate and the defendant were never properly a part of any judicial proceeding. For emphasis, the language of the trial court set out on page 13 of its transcript and page 10 of the petition is quoted:

> "*THE COURT:* You are not going to have any trouble because I have excluded all transactions dealing with this property prior to the day we took it, and this declaration of taking was filed in toto except merely the contract and the names of the parties to it."

This summary, arbitrary ruling of the trial court at the pre-trial precluded petitioners from offering any evidence of the conspiracy and fraud preceeding the condemnation by the defendant. Double appraisals were not discovered by petitioners until after the hearings. All of this was in clear violation of petitioners inalienable right to due process of law, and renders the public policy rule of res judicata, only a rule of procedure, inapplicable under the decision in *Nunnally Investment Co. v. United States*, 36 F. Supp. 332 and well stated in 32 ALR 2d 1135;

> "A particular matter or issue which is withdrawn or withheld from consideration of the court, either by stipulation of the parties or otherwise, is not adjudicated, and a judgment entered on other issues will not act as a bar to another action on the issue so withdrawn."

The plain statement of the rule quoted and the plain report of the action of the trial court leaves no argument but what the trial court withdrew and withheld all questions relating to the conspiritorial actions of the syndicate in inducing the defendant to proceed with the condemna-

tion, which was only a screen of respectability and legality to cover the previous actions. These being withheld from the open proceedings before the jury by the trial court, a clearer situation could not be imagined for the application of the quoted rule in which the procedural rule of res judicata would not apply. Nor under a searching examination of the documents attached as exhibits to the petition, the Congressional hearings reported in the Congressional Record, Vol. 107, dated June 26, 1961 at pages 10417-10437, can but one conclusion be reached, and that is that the fundamental right of freedom from unjust invasion of property was violated against the petitioners, which is proscribed by the Amednment V of the United States Constitution.

With the facts so plain and the law so clear to demonstrate the violation of petitioners' fundamental rights, more persuasive reasons for granting the writ of certiorari need to be advanced in support of this petition for rehearing.

It becomes quite apparent that there exists a wide divergence between the views of the court and petitioners' advocate respecting "supreme law" and "fundamental justice", the court subscribing to the postivistic-sociological concepts while the advocate strongly subscribes to the natural law concepts which will be advocated here.

The compelling reason for granting the writ is to acknowledge the supreme law and fundamental justice thereunder according to esoteric Light.

The positistivic-sociological concepts of the law hold to the premise that man is basically a social animal and must form

communities for mutual assistance, community effort and protection. Environmental excuses are used to explain the individual's failure to measure up. Under these concepts law has no higher origin than what those in authority at any given time say it is, a purely materialistic-postivistic concept, upon which all totalitarian systems have been founded since antiquity — the state is supreme, there is no higher authority. A searching reading of both Biblical and secular history provides positive proof that ancient civilizations were rooted in this concept and perished because of it, Sodom and Gomorroh, Tyre and Sidon, Egypt, Babylon, Israel, Greece, Roman Empire, and in more modern times France and England.

Throughout the Ages there have been beacon lights acknowledging but one Supreme Author whose precepts and wisdom are revealed in the Holy Writ. Among these beacon lights was Frederic Bastiat, a French economist, statesman, and author who lived from 1801-1850. One of his works, The Law, was first published in 1850, and in which he reaffirmed that God is the only Soverign. Which he expresses;

> "We hold from God the gift which includes all others. This gift is life-physical, intellectual and moral life.
>
> But life cannot maintain itself alone. The Creator of life has entrusted us with the responsibility of preserving, developing, and perfecting it. In order that we may accomplish this, He has provided us with a collection of marvelous faculties. And has put us in the midst of a variety of natural resources. By the application of our faculties to these natural resources we convert them into products, and use them. (Man was created to have dominion, Genesis 2:28-29). This process is necessary in order that life may run its appointed course.

Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.

What, then, is law? It is the collective organization of the individual right to lawful defense.

Each of us has a natural right-from God-to defend his person, his liberty, and his property. These are three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of any one of them is completely dependent upon the preservation of the other two. For what are faculties but the extension of our individuality? And what is property but an extension of our faculties?

If every person has the right to defend — even by force — his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right — its reason for existing, its lawfulness — is based on individual right. And the common force that protects this collective right cannot logically have other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force — for the same reason — cannot lawfully be used to destroy the person, liberty, or property of individuals or groups (due process of law) . . .

"When a portion of wealth is transferred from the person who owns it — without his consent and without compensation, and whether by force or by fraud — to anyone who does not own it, then I say that property is violated; that an act of plunder is committed." Denial of due process of law . . .

"The purpose of the law is to prevent injustice from reigning. In fact it is injustice, instead of justice, that

has an existence of its own. Justice is achieved only when injustice is absent . . .

"But make the laws upon the principle of fraternity — proclaim that all good, and all bad, stem from the law; that the law is responsible for all social inequalities — then the door is open to an endless succession of complaints, irritations, troubles, and revolutions . . .

Law is justice. And it is under the law of justice — under the reign of right; under the influence of liberty, safety, stability, and responsibility — that every person will attain his real worth and the true dignity of his being. It is only under this law of justice that mankind will achieve — slowly, no doubt, but certainly — God's design for the orderly and peaceful progress of humanity . . .

God has given men all that is necessary for them to accomplish their destinies . . .

And now that the legislators and do-gooders have so futilely inflicted so many systems upon society, may they finally end where they should have begun: May they reject all systems, and try liberty; *for liberty is an acknowledgment of faith in God and His works.*"

All of the foregoing principles are Scripturally supported as evidenced by a study of the Epistles of St. Paul, one of the truly learned men of all time, one of the references being; I Timothy 1:8-10, "But we know that the law is good, if a man use it lawfully. Knowing this, that the law is not made for a righteous man but for the lawless and disobedient, for murderers of fathers and murders of mothers, for manslayers; for fornicators, for them that defile themselves, for liars, for perjured persons, and if there be any other thing that is contrary to sound doctrine.

For the flesh lusteth against the Spirit, and the Spirit against the flesh; and these are contrary the one to the other, so that ye cannot do the things that ye would.

But if ye be lead by the Spirit, ye are not under the law."

Most of modern society would fall within the following classification, again quoting from St. Matthew 23:23-24

"Woe unto you, scribes and Pharisees, hypocrites. For ye pay tithes of mint and anise and cummin, and have omitted the weighter matters of the law, justice, mercy, and faith; these ought ye to have done, and not to leave the other undone.

"Ye blind guides, who strain at a gnat, and swallow a camel."

This Court in Antonio Richard Rochin, Plaintiff in Certiorari, v. People of the State of California, 342 U.S. 165; 72 S. Ct. 205, in broad terms alluded to the existence of the supremacy of higher principles and sources of justice in the language of Justice Frankfurther;

"These standards of justice are not authoritatively formulated anywhere as though they were specifics. Due process of law is a summarized constitutional guarantee of respect for those personal immunities which, as Mr. Justice Cardozo twice wrote for the Court, are "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

It is recognized that our modern society has largely disparaged the sanctity of property and its inviolability, placing primary sociological emphasis upon the physical man, regardless of the depraved state in which an individual may have degenerated. But as the above quoted authorities well state, property cannot be distinguished from the other sovereign rights of man without destroying the others.

Applying this reasoning to the fact that none of the evidence was admitted, or permitted to be, relating to the background agreements between the syndicate and the United States it cannot with conviction be denied but what the petitioners were clearly denied the protection of "De process of law" and their petition for a writ of certiorari should be granted.

CONCLUSION

Petitioners respectfully pray that this petition for rehearing of their petition for writ of certiorari be granted, after oral argument, and upon the facts and the law.

Prepared By:

O. P. EASTERWOOD, JR.,
Barr Building,
Washington, D. C.

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.